

ANALYSIS OF ORIGINAL BILL

Author: Nava Analyst: Angela Raygoza Bill Number: AB 287
 Related Bills: See Legislative History Telephone: 845-7814 Introduced Date: February 9, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Employer Wages Paid to Agricultural Employees Credit/January 2007 Freezing Conditions

SUMMARY

This bill would provide a tax credit to agricultural employers for wages paid to employees during the freezing conditions that began on January 11, 2007.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to give agricultural employers, whose business was affected by the freeze, a credit for the employee wages they paid while their business was inoperable.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2007.

POSITION

Pending.

ANALYSISFEDERAL/STATE LAW

Current federal and state tax laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses (e.g., child and dependent care credits), influence business practices and decisions, or achieve social goals.

THIS BILL

This bill would provide a tax credit to agricultural employers that conduct an agricultural trade or business in a county that had a state of emergency, as declared by the Governor, as a result of the freezing conditions that began on January 11, 2007. The credit would be equal to 40% of the amount of the wages paid to a qualified employee.

Board Position:

_____ S _____ NA _____ NP
 _____ SA _____ O _____ NAR
 _____ N _____ OUA _____ X PENDING

Department Director

Date

Selvi Stanislaus

3/14/07

by Lynette Iwafuchi

This bill would limit the credit to the first \$6,000 in wages paid to the same individual during a taxable year by a qualified taxpayer.

The bill would define the following terms:

- “Qualified county” means a county that is included in the state of emergency, as declared by the Governor, as a result of extreme low temperatures and freezing conditions that began on January 11, 2007.
- “Qualified employee” means an agricultural employee of a qualified taxpayer whose principal place of employment on January 12, 2007, with the qualified taxpayer was in a qualified county.
- “Qualified taxpayer” means any agricultural employer that conducted an active agricultural trade or business in a qualified county and whose trade or business in that qualified county was inoperable on any date on and after January 12, 2007, because of the freezing conditions that began on January 11, 2007, for which a state of emergency was declared by the Governor.

Unused credits can be carried over to future years until the credit has been exhausted.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill would allow a credit for a “qualified employee” whose principal place of employment was with a qualified taxpayer in a qualified county. Because the bill fails to define how the “principal” place of employment is to be determined, it is unclear whether a credit would be allowed in a case where an employee performs services for a qualified taxpayer both within designated counties and outside of designated counties. The department would be unable to verify whether a particular employee’s principal place of employment on January 12, 2007, was within a qualified county.

The bill uses terms that are undefined, for example, “inoperable” and “principal place of employment.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit. The author may wish to amend the bill to provide a clear definition of the terms.

The bill defines a “qualified taxpayer” as an agricultural trade or business in a qualified county and whose trade or business is inoperable on any date after January 12, 2007. The bill lacks information regarding how to certify if the agricultural trade or business is inoperable due to the freezing conditions. The author may wish to amend the bill to require certification from the qualified county in which the “qualified taxpayer” is inoperable.

The term “agricultural trade or business” is ambiguous. The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate administration of this credit.

The author may wish to amend the bill to clearly define “agricultural trade or business,” by making reference to one of the following:

- North American Industry of Classification System defines “agricultural trade or business” as establishments primarily engaged in performing soil preparation services, crop services, veterinary services, other animal services, farm labor and management services, and landscape and horticultural services, for others on a contract or fee basis.
- Internal Revenue Service section 501 (g) defines the term “agricultural” as the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

LEGISLATIVE HISTORY

SB 114 (Florez, 2007/2008) would allow disaster loss treatment for losses sustained as a result of the January, 2007, freezing conditions. This bill is currently in the first house.

SB 148 (Hollingsworth, 2007/2008) would add fruit and nut trees that were severely damaged by the freeze of January, 2007, to the current property tax exemptions allowed for trees subject to other specified freezes. This bill is currently in the Senate Appropriations Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. These states lack a credit comparable to the credit this bill would allow.

FISCAL IMPACT

The department's costs to administer this bill will be determined once the implementation considerations addressed above have been resolved.

This bill would require a calculation for the credit that would necessitate the development of a new form or worksheet. As a result, this bill would impact the department's printing, processing and storage costs for tax returns. The costs will be determined as the bill moves through the legislative process, and, if necessary, an appropriation will be requested.

ECONOMIC IMPACT

The loss in tax revenue would be the amount of personal income tax credits allowed for wages paid to qualified employees during the freezing conditions that began on January 11, 2007. As discussed above, this bill contains many undefined terms. Absent clarification, this bill could potentially generate available credits in excess of \$0.5 billion per year, resulting in a revenue loss of approximately \$100 million per year.

POLICY CONCERNS

This bill is silent on the number of years unused credits could be carried over. Consequently, the department would be required to retain the credit on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of tax credits by the Legislature.

The bill fails to limit the years in which this credit may be claimed. As a result, if the business were inoperable for even a single day, this credit would be available to taxpayers in future years since the business was inoperable for at least a single day as a result of the freezing conditions in January, 2007.

LEGISLATIVE STAFF CONTACT

Angela Raygoza
Franchise Tax Board
(916) 845-7814
angela.raygoza@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov